

The Best Estate Plan for Attorneys

Part Three

by James Lange, CPA/Attorney

General Plan

- **Estate planning for IRA owners with existing and likely future laws**
- **The best estate plan for married attorneys**
- **Planning for non-traditional families**

The Game Has Changed

- **For most of us, saving money with estate planning has shifted away from federal estate tax avoidance to federal income tax avoidance**
- **Reason for the shift is the ever increasing federal estate exemption amounts**

Constantly Changing Exemption Amount

- **\$11,400,000 in 2019**
- **\$22,800,000 for married**
- **Adjust for inflation in later years**
- **Unlimited in 2010**
- **For many years, it was \$600,000**

PA Inheritance Tax is Still Here

- **Spousal, unlimited**
- **Lineal heirs, 4 and ½%**
- **Siblings, 12%**
- **All others, 15%**

Which State Should You Live In?

- **First, you should live where you want to live**
- **If it is close, like roughly six months each, I like to think about income taxes**

Which State Should You Live In?

- **Florida is an obvious choice, but watch for extreme heat, hurricanes, ants, storm alerts, etc. during the summer**
- **If you move to California or New York or a state where they tax your IRA, make your Roth conversion before you move**

The Problem with Traditional Estate Plans

- The cruelest trap of all
- Too many assets in the Family Trust and not enough to surviving spouse

What Most Attorneys Want

- **Make sure that while we are both alive, we don't run out of money**
- **Provide or over-provide for the survivor after the first death**
- **Keep things simple**

What Do Most Attorneys Get Now?

- **Too much money in Trust**
- **Not enough money outright for surviving spouse**
- **Limitations, litigation, fees, aggravation**

Current Tax Benefits of A/B Trusts for Estate Exemption Amounts

- Nothing
- No advantage
- Nada

New Reality

- **For most middle and upper middle income attorneys, estate tax is not a factor**
- **The paradigm shift goes from estate taxes to income taxes**
- **The old estate plans have to be redone**

New Reality (continued)

- **Pass estate efficiently, safely and securely**
- **Provide for needs of spouse, children and charity**
- **Asset protection**
- **Trusts not for estate tax avoidance, but for protection**

Practice Continuation Plans

- **Fiduciary duty to provide continued representation in the event of your disability, retirement or death**
- **Partnership or corporate agreements**
- **Buy-sell agreements funded with life insurance**
- **Formula buy outs**

What About IRAs?

- **The best solution requires you to know what happens to IRAs and retirement plans at death**

Overview of IRAs and Retirement Plans at Death

Inherited IRAs and retirement plans

- Spousal beneficiary
- Non-spousal beneficiary

Nitty-Gritty Numbers for IRAs at Death

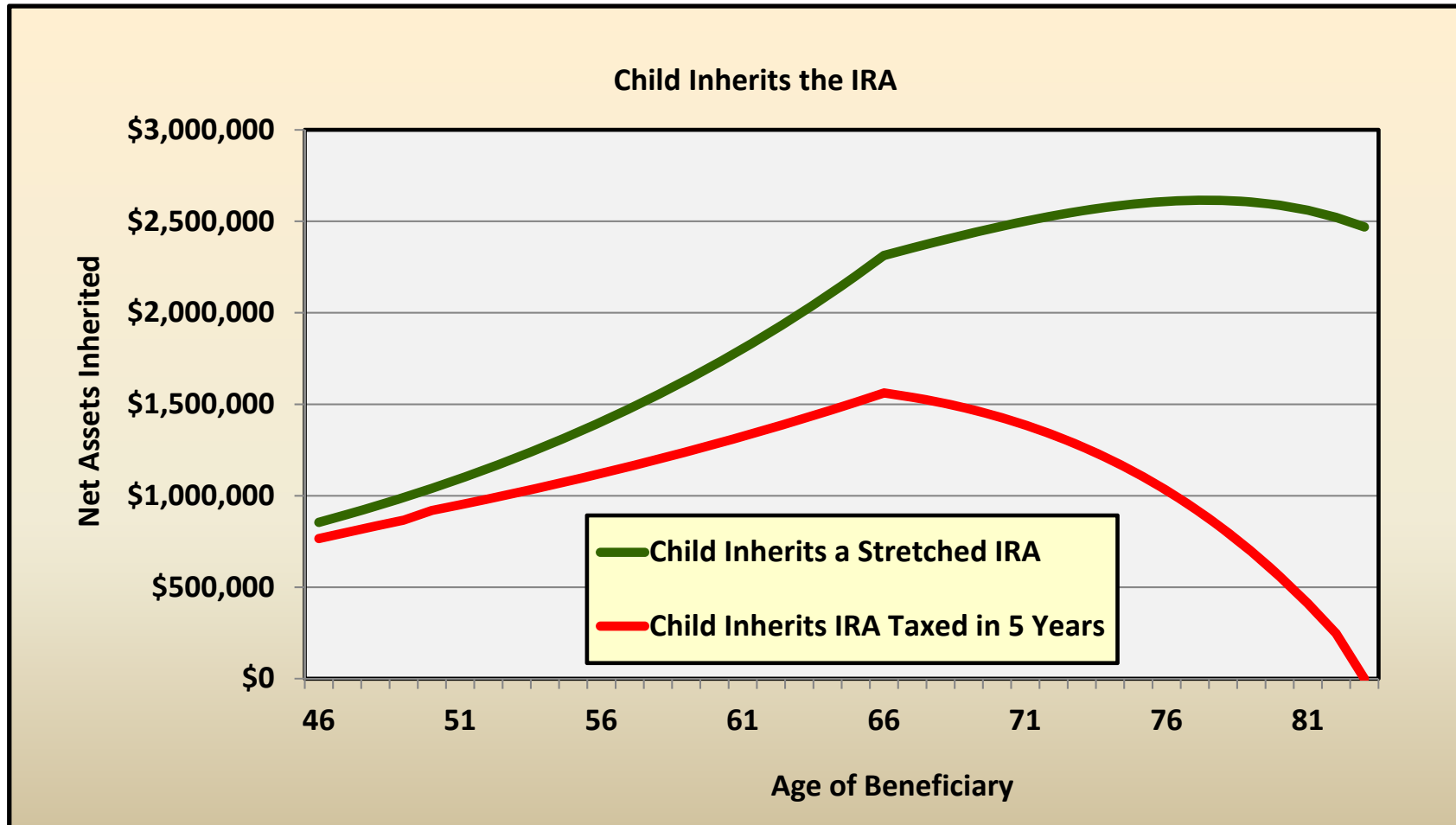
- **Time to get into the numbers under today's law**
- **Need to bring up special software**
- **This applies to today's laws**

That is Today's Laws

I Fear the Death of the Stretch IRA

- **Time to get into the numbers under today's law**
- **Need to bring up special software**
- **This applies to today's laws**

Potential Impact of the Death of the Stretch IRA



Assumptions: Potential Impact of the Death of the Stretch IRA

- Child inherits a \$1 million IRA at age 45 and earns \$100,000 annually during working years
- Child retires at 67, and receives \$40,000 in Social Security income annually
- Expenses are \$90,000 and adjusted by 3.5% annually
- Rate of return is 7%

The Stretch IRA

- **There is no magic required to achieve a stretch IRA, but plenty of pitfalls**
- **Attorneys, financial advisors and clients often manage to stumble into those pitfalls**
- **Death of the Stretch IRA looms over us**

Stretch IRA Pitfalls

- **Drafting the beneficiary of IRA or retirement plan**
- **Estate administration after death of the IRA owner**
- **Incorrect titling**

Younger Beneficiaries Get a Longer Stretch

- **Advantages of naming children as beneficiaries**
 - **Timing**
 - **Additional stretch**
- **Advantages of naming grandchildren (or better yet, Trusts for grandchildren) as beneficiaries**

If Beneficiary is Trust, Trust Must Meet Five Conditions to Get Stretch

- **Trust must be valid under state law**
- **Trust is irrevocable, or will become irrevocable at death**
- **Beneficiaries must be identifiable**
- **This is where attorneys make lots of drafting errors**

If Beneficiary is Trust, Trust Must Meet Five Conditions to Get Stretch

- **All beneficiaries must be individuals**
- **Trust documentation due to plan administrator by October 31st**
- **We send it to plan administrators right after we prepare it**

Attorneys Routinely Botch IRA Beneficiary Designation Forms

- **My recommendation: Either do it right or have someone else (not client) do it**

Best Choice of Beneficiary of IRA

- It depends on circumstances we may not be able to predict

Best Choice of IRA Beneficiary

- A good case for the spouse
- A good case for the children
- A good case for grandchildren

Problems with Naming Children or Grandchildren

- **What if the market goes down?**
- **What if the last illness is expensive, and the spouse needs the money?**
- **What if the Stretch IRA is killed?**

What About Best Choice for Roth IRA Assets?

- **Case could be made for:**
 - **Spouse**
 - **Children**
 - **Grandchildren**
- **Who got the IRA and/or non-IRA is also a factor**

Best Choice of Beneficiary of Wills and Trusts

- It depends

Coordinate Wills, Revocable Trusts, and Beneficiary of IRA, etc.

Deciding among beneficiaries:

- **The beneficiary of one type of asset will likely impact the best choice for the beneficiary of a different asset**

Hint at Best Solution: The Concept of Disclaimer

- How disclaimers work
- You can't force someone to accept a bequest
- You also can't change a Will or beneficiary designation after death (or can you)?

Disclaimer Planning

- **The key to disclaimer planning is having:**
 - **Correct first contingent beneficiary**
 - **Second contingent beneficiary**
 - **Third contingent beneficiary**
 - **Etc.**
- **Have this in place before death**

Problem with Estate Planning

- **Uncertainty:**
 - **Who will die first?**
 - **How much money will there be left?**
 - **What are the needs of the survivors?**
 - **What are the tax rates?**

Solution: Lange's Cascading Beneficiary Plan

- **Combine the concept of the carve-out and the disclaimer**
- **Cascade stream as follows:**
 - 1. Surviving Spouse**
 - 2. Children**
 - 3. Trust for Grandchildren**

Best Estate Plan for Married Couples

- **Assume you have a traditional (leave it to beaver) family**
- **Assume you trust your spouse**

Cascading Planning Works for Non-Spouse Situations As Well

Assuming there is no spouse, one cascade is for:

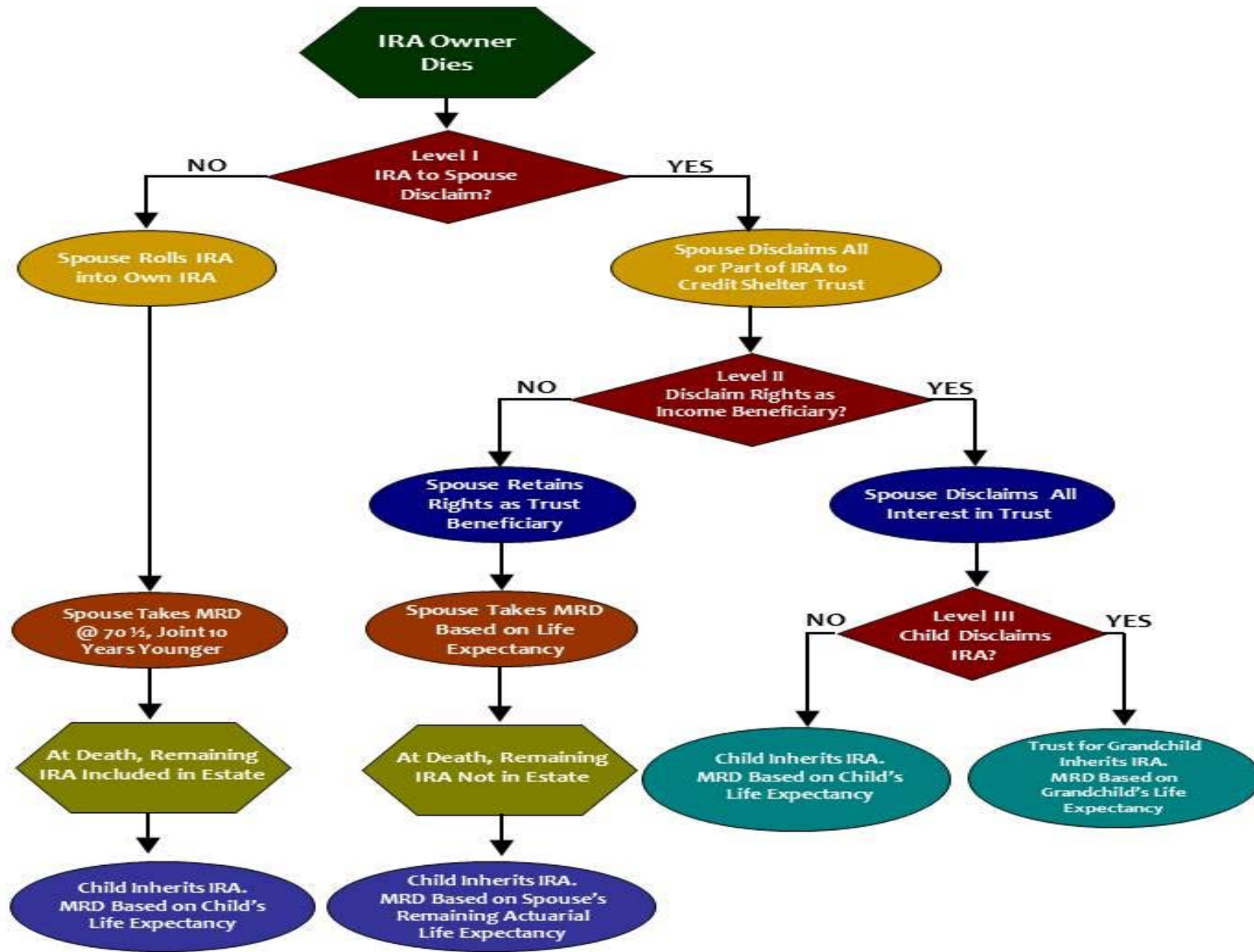
- Children**
- Trusts for grandchildren as contingent beneficiary**

Cascading Planning Works for Non-Spouse Situations As Well

Assuming there are no children, cascade for:

- siblings**
- nieces and nephews**
- grand nieces and nephews**

Lange's Cascading Beneficiary Plan



Lange's Cascading Beneficiary Plan

- For flexibility, you can't do better than LCBP

History of the Solution

- **Early 90s**
- ***The Tax Adviser, 1998***
- **Jane Bryant Quinn, 2001**
- ***Newsweek***
- ***The Wall Street Journal***
- ***Kiplinger's Retirement Reports***
- ***The Wall Street Journal* again**
- ***Retire Secure!, 2006, 2009 & 2015***

Solution Isn't in Left Field

- **Endorsement of LCBP or at least endorsed book advocating plan:**
 - **Charles Schwab**
 - **Jane Bryant Quinn**
 - **Ed Slott**
 - **Larry King**
 - **Dozens of additional financial experts**